In the High Court of Judicature at Madras

Dated : 16.8.2007

Coram

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.762 of 2007

M/s.Sundaraam Finance Ltd.,
21, Pattulos Road
Chennai 2. .. Appellant

Vs

The Assistant commissioner of Income Tax
Company Circle IV (4)
Chennai. .. Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'A' Bench dated 31st July 2006 made in I.T.A.No.54/Mds/2002 for the assessment year 1998-99 against the order dated 24.10.2001 in ITA No.290/2001-02 forith the commissioner of Income Tax (Appeal -V) madras Assessment order dated 10.3.2001 and made in PA/GIR No.AAA C54944 A/9-S Commissioner of Income Tax Special Range II Chennai.34.

For Appellant : Mr.C.Rajan
for Ms/.Subbaraya Aiyar

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The assessee filed an appeal against the order of the Income Tax Appellate Tribunal Madras 'A' Bench made in I.T.A.No.54/Mds/2002 dated 31.7.2006. The relevant assessment year is 1998-99. The substantial questions of law formulated for entertainment of the appeal are as follows:-

1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the appellant is not entitled to deduction of the 'provision' made in respect of Non performing Assets which are considered irrecoverable ?

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2. Whether the Appellate Tribunal was justified in not appreciating that the provision made in respect of Non performing Assets if not allowable as a bad debt is allowable as a business loss ?

3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in treating the amount of Rs.36,47,585/- collected as contingent deposit as Income of the Appellant ?"

2. The facts of the case as culled out from the grounds of appeal is as follows:-

The appellant company is engaged in the business of hire purchase financing, equipment leasing and allied activities. For the assessment year 1998-99, the appellant filed a return of income on 30.11.1998 declaring a total income of Rs.50,38,16,950/- The regular assessment under Section 143(3) was completed on 30.3.2001 determining the total income at Rs.79,16,75,880/-. While completing the assessment the assessing officer disallowed the deduction for provision for Non-Performing Assets and Contingency Deposit. Aggrieved against the above order, the appellant preferred an appeal to the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) by following the earlier order of his predecessor for the assessment year 1995-96 allowed the appeal. Aggrieved against the order of CIT, (Appeals), the Revenue preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal following the decision of this Court in T.N.POWER FINANCE AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. VS. JOINT COMMISSIONER OF INCOME TAX (280 ITR 491) decided the issue against the appellant. With regard to the collection of contingency deposits, the Tribunal followed its order for the earlier assessment years and reversed the order of C.I.T. (Appeals). The correctness of the said order is now put in issue before this Court.

3. We heard the counsel for appellant and perused the materials on record.

4. The first and second questions of law are inter-related to each other. Learned counsel appearing for the assessee submits that the issue involved in these questions of law is squarely covered by the decision of this Court in the case of T.N.POWER FINANCE AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. VS. JOINT COMMISSIONER OF INCOME TAX (280 ITR 491) against the assessee. In the said judgment, the Division Bench of this Court has held that the assessee was not entitled to deduction in view of explanation to section 36(1)(viia) of the Income-tax Act which says that the provision for bad and doubtful debt made in the account of the assessee is not an allowable deduction. Likewise, the third question of law is also covered by the decision of this Court in the case of COMMISSIOENR OF INCOME TAX VS. SAKTHI FINANCE LTD., (291 ITR 83(Mad), wherein it was held that as long as the receipt of the amount by the assessee was appreciated with liability to refund the amount, such receipt of the amount would not be characterised as an income and therefore, the

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same cannot be taxed. vide K.C.P.Limited Vs. Commissioner of Income-tax (2000) 245 ITR 421 (SC) and CIT Vs. Southern Explosives Co. (2000) 242 ITR 107 (Mad). Thus, the third question of law is also covered by the decisions against the assessee. Thus, as all the question of law raised are already answered against the assessee, the questions of law so formulated need not be re-considered by us again as the issue is already settled.

For the above reasons, the the Tax Case Appeal is dismissed.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

krr/usk

To

1.The Assistant Registrar,
Income-Tax Appellate Tribunal,
III Floor, Rajaji Bhavan,
Besant Nagar, Madras 90 .

2.The Assistant Commissioner of Income Tax,
Company Circle IV, Chennai.34.

3. The Joint Commissioner of Income Tax,
Special Range II, Chennai 34.

4. The Commissioner oF Income Tax,
(Appeals)-(v),
No.121,M.G.Road, Chennai.34.

SSV(CO)
RD 17.9.07

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